

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA,)	
)	
v.)	Crim. No. 03-41-B-W
)	
DAVID CADIEUX,)	
)	
Defendant)	

RECOMMENDED DECISION

This matter is before the court on the defendant's Motion to Suppress (Docket No. 31). The matter was referred to me and I conducted an evidentiary hearing on January 26, 2004. Cadieux is charged with a violation of 8 U.S.C. § 922 (g)(1), being in possession of a firearm after having been convicted of a crime punishable by imprisonment for a term exceeding one year. He seeks to suppress two firearms discovered underneath a barn at the residence of Theresa Nye in Temple, Maine. Cadieux also asks that the court suppress statements he made while in custody in a police cruiser parked in the dooryard of the Nye residence. I now recommend that the court adopt the following proposed findings of fact and **DENY** the motion.

Proposed Findings of Fact

I begin with the facts stipulated by the parties. Both the Government and the defendant agree that the area adjacent to and underneath the barn at the Nye residence is part of the curtilage. They have also stipulated that the Government will not offer during its case in chief a statement made by Cadieux to the corrections officer during the booking process, and overheard by Deputy David Rackliffe. In addition to these stipulations, I find the following facts surrounding the May 15, 2003, search of Theresa

Nye's barn based on the testimony I heard during the suppression hearing and the sworn reports submitted by the officers who testified before me.

Franklin County Sheriff's Department Patrol Deputy David Rackliffe responded to a 9-1-1 call at the residence of Theresa Nye in Temple, Maine. Jolene Nye, Theresa's adult daughter, made the call because her mother and David Cadieux were having an argument and Cadieux had a gun. Theresa Nye informed the dispatch operator that Cadieux fled on foot into the woods prior to the officer's arrival at the scene. Rackliffe was the first officer to arrive at the scene and he learned from Mrs. Nye that she and Cadieux had been arguing in the barn. Rackliffe and Theresa Nye went to the barn to search for the weapons. Jolene Nye indicated that there should be a 16-gauge shotgun and a black powder rifle in the barn. Theresa Nye was calm and cooperative with Rackliffe and she pointed out to him a gun cabinet in the barn where the guns had been stored. The officer and Nye searched together throughout the barn and did not find any weapons, except for a BB gun. Rackliffe did not specifically ask Nye for permission to search the barn, but he clearly indicated that he wanted to find the guns and Nye voluntarily went with him to the barn to assist him in that search. Any reasonable person in Nye's situation would have understood that Rackliffe's request encompassed a search of the barn.

Deputy Michelle St. Clair and Corporal Nathan Bean of the Franklin County Sheriff's Department arrived at the scene shortly after Rackliffe. Once the barn had been initially secured, Theresa Nye went into the house with St. Clair, Rackliffe, and perhaps other officers to write a statement. During the preparation of that statement Nye became evasive with her answers, indicating that Cadieux had previously said, "[She] talk[s] too

much.” However, Nye did not tell the officers to leave nor did she tell them to stop looking in the barn. At some point, either before they went into the home to prepare the statement or after Nye had been questioned and they came back outside, Nye and St. Clair had a general conversation about ponies Nye stabled in the barn and Nye’s concern that no one go into the stall because he or she might be kicked. Nye told St. Clair that the ponies had been abused by a previous owner and were easily agitated. Other than expressing a generalized concern about someone getting kicked if they went into a pony’s stall, Nye did not limit the search or express any displeasure with the officer’s activities outside her residence.¹

More officers arrived at the scene, including representatives of the Maine State Police Tactical Team. The officers continued to secure the area of the barn and its immediate surroundings without any objection from Nye. At some point they learned from either Theresa Nye, Jolene Nye, or Shaun Borden (Jolene Nye’s boyfriend, who was also present at the scene) that Cadieux had a prior felony conviction and was therefore prohibited from possessing firearms. As the various officers arrived and took up positions surrounding the barnyard, Cadieux elected to try to return to the barn. Corporal Bean heard a noise that sounded like someone forcing open a nailed shut door. He also heard Deputy St. Clair tell someone to stop. Bean could hear noises coming from the barn and determined that Cadieux was back inside the barn.

The officers had locked the door that led to the horses’ stalls, presumably to keep Cadieux from going back into that part of the barn. Bean observed Cadieux in the barn area moving a small piece of metal through the door’s crack in order to push open the

¹ I recognize that counsel for the defendant maintains that Theresa Nye told the officers not to search “in the area of the ponies” unless she was present. I do not find that she made any such statement based upon the testimony presented at the hearing.

“hook and eye” lock that had been secured by the officers. When Cadieux came through the door his hands were empty. Bean approached him with his gun drawn and ordered Cadieux to get down on the floor. Cadieux was initially non-compliant, but eventually Cadieux went down to the ground. When the officers attempted to place handcuffs on him he again became non-compliant and a scuffle ensued. Once Cadieux was handcuffed, he was asked his name. He refused to identify himself. Borden confirmed that the person in custody was David Cadieux.

Rackliffe placed Cadieux in his police cruiser. Bean went to the cruiser and asked Cadieux where the guns were, but Cadieux refused to respond. Bean then returned to the area of the barn where he had first seen Cadieux hiding. He found the shotgun and the 50 caliber black powder rifle underneath the barn in a crawl space in the area of the barn where the horse stalls were located.

After Rackliffe learned the guns had been located, Cadieux was a felon, and the Assistant District Attorney had authorized charges being filed, he formally told Cadieux he was under arrest for being a felon in possession of firearms. Cadieux was still in the police cruiser and he again became combative and angry. Cadieux informed Rackliffe that he believed he could have guns on private property and he had a permit to possess guns in Massachusetts. No Miranda warnings were given to Cadieux during the time he remained with the officers.

Discussion

1. The search for the firearms

The Government justifies this warrantless seizure of the firearms as a valid third party consent to search given by Theresa Nye. I concur that Theresa Nye gave the officers her consent to search the barn and that, at the most, she may have cautioned deputy St. Clair about agitating the ponies. The guns were ultimately located in a crawl space under the barn and their seizure did not require any entry into the ponies' stalls. Therefore, even if Theresa Nye did issue a cautionary addendum to her general consent to search the barn, the officers did not discover the guns by exceeding in any way the scope of Nye's consent, as they understood it.

The Government bears the burden of proving that the search it conducted was within the scope of the consent. United States v. Turner, 169 F.3d 84, 87, n.3 (1st Cir. 2002). I believe that United States v. Melendez, 301 F.3d 27, 32-34, (1st Cir. 2002) directly addresses the issues raised by this motion. In Melendez the defendant's mother consented to the search of a bedroom, cautioning the officers that she did not want her apartment "torn up." Citing well established case law, the First Circuit emphasized that the scope of consent must be judged by a test of objective reasonableness. Id. at 32. In the Melendez case, as in this case, the party giving the consent to search was cooperative with the officers and understood fully what they were looking for and where they intended to look. In this case Theresa Nye even assisted them in their initial search. In the context of the 9-1-1 call they received, it only made sense that when Cadieux returned to the barn in a drunk and belligerent state, the police officers would not have gotten Theresa Nye to again come to the barn to assist with the continuing search for weapons.

Under the specific factual circumstances of this case, the inescapable conclusion is that Theresa Nye freely assented to the search of her barn.

2. The Statements Made By Cadieux

The government concedes that the defendant was not advised of his Miranda warnings on May 15, 2003, while seated in the police cruiser. That the defendant was in custody appears obvious. He was handcuffed and restrained to the degree associated with a formal arrest. For purposes of custodial interrogation, a defendant is in “custody” when his or her freedom of movement is restricted to a degree associated with a formal arrest, United States v. Ventura, 85 F.3d 708, 712 (1st Cir. 1996), whether or not a formal arrest has occurred. The issue posed by this motion is whether the statements made by Cadieux were the product of an interrogation.

Clearly the officers questioned Cadieux when they asked him where the firearms could be found. Just as clearly, Cadieux refused to answer their questions and the police left him and went back to the barn to search for the guns. After the guns had been found and the felony record confirmed, the police returned to Cadieux and informed him that he was formally being placed under arrest. At that point in time Cadieux, not in response to any specific question, informed the officers about his “right” to possess guns in Massachusetts and on his private property. The sole question therefore is whether the officers’ engaged in the “functional equivalent” of questioning when they returned to the cruiser. Rhode Island v. Innis, 446 U.S. 291, 300-301 (1980). I conclude they did not.

Cadieux’s argument is that because he was improperly questioned about the location of the firearms sans Miranda warning, his later statements should be suppressed even though they were not the product of any questioning. According to Cadieux this is

so because the officers' conduct was designed to elicit an incriminating response from Cadieux and was therefore the functional equivalent of questioning. Cadieux cites not one case holding that telling someone he is under arrest is the functional equivalent of questioning. The police did not pursue the improper questioning of Cadieux when he refused to tell them where the guns were located. Instead they left him alone and went about their business. That Cadieux chose to make what he obviously believed were exculpatory statements about his right to possess guns, does not establish that the officers engaged in the functional equivalent of an interrogation of Cadieux. They asked him no questions after the formal arrest nor did they engage in any pattern of conduct designed to elicit an incriminating response.

Conclusion

Based upon the foregoing factual findings, I now recommend that the Court **DENY** the motion to suppress.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

Dated February 3, 2004

**U.S. District Court
District of Maine (Bangor)
CRIMINAL DOCKET FOR CASE #: 1:03-cr-00041-JAW-ALL
Internal Use Only**

Case title: USA v. CADIEUX

Other court case number(s): None

Magistrate judge case number(s): 1:03-mj-00034-MJK

Date Filed: 07/01/03

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Pending Counts

UNLAWFUL TRANSPORT OF
FIREARMS, ETC. (Felon in

Disposition

Possession of Firearm) 18:922
(g)(1)
(1s)

Highest Offense Level (Opening)

Felony

Terminated Counts

18:922(g)(1) - Felon in possession
of firearm
(1)

Disposition

**Highest Offense Level
(Terminated)**

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Felony

Complaints

18:922G.F Felon in possession of
firearm.

Disposition

Plaintiff

USA

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